

# HB1823 HD1

## [HB1823 HD1](#)

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Measure Title: RELATING TO PUBLIC LANDS.

Report Title: Public Lands; Reopening Lease; Mediation; Arbitration

Description: Requires mediation in disputes regarding the fair market value or fair market rental of public lands. Provides for binding arbitration in the event of unsuccessful mediation. Effective July 1, 2020. (HB1823 HD1)

Companion: [SB2966](#)

Package: None

Current Referral: WTL/JDL, WAM

Introducer(s): ONISHI, EVANS, HANOHANO, LOWEN, NAKASHIMA, Creagan

<a href="#">Sort by Date</a>		Status Text
2/28/2014	S	Received from House (Hse. Com. No. 62).
2/28/2014	S	Passed First Reading.
3/6/2014	S	Referred to WTL/JDL, WAM.
3/19/2014	S	The committee(s) on WTL/JDL has scheduled a public hearing on 03-20-14 1:20PM in conference room 225.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of**  
**WILLIAM J. AILA, JR.**  
**Chairperson**

**Before the Senate Committees on**  
**WATER AND LAND**  
**and**  
**JUDICIARY AND LABOR**

**Thursday, March 20, 2014**  
**1:20P.M.**  
**State Capitol, Conference Room 225**

**In Consideration of**  
**HOUSE BILL 1823, HOUSE DRAFT 1**  
**RELATING TO PUBLIC LANDS**

House Bill 1823, House Draft 1 proposes to amend Section 171-17, Hawaii Revised Statutes (HRS), to require mediation in disputes regarding the fair market value or fair market rental of public lands, and provides for binding arbitration in the event of unsuccessful mediation. **The Department of Land and Natural Resources (Department) opposes this measure.**

Section 171-17, HRS, already provides a fair process for binding arbitration that requires the participation of qualified real estate appraisers. Conversely, this bill does not require that the mediator possess any real estate appraisal qualifications or expertise. In addition, for lease rental re-openings, the bill would require that the arbitrator be a licensed attorney or other person, rather than strictly a real estate appraiser.

Requiring the Department and the opposing party to engage in non-binding mediation prior to binding arbitration will result in making the dispute resolution process more costly and time consuming. Particularly objectionable is the measure's relaxed standards over who may serve as a mediator or arbitrator, serving as an endorsement (and in some instances, requirement) of potentially less than qualified individuals presiding over the resolution of real property valuation disputes. The mediation and arbitration processes as contemplated in this measure may produce settlements where the State would receive less than fair market rents from the use of public trust lands, resulting in decreased lease rentals, including ceded land revenues.<sup>1</sup>

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<sup>1</sup> Because of the Office of Hawaiian Affairs (OHA) settlement, OHA no longer receives a percentage of actual ceded land revenues received by the State, but instead receives an annual amount fixed at \$15.1 million. Though agencies receiving ceded land revenues have been directed to continue to pay the 20% share to OHA, there has historically been an annual shortage in arriving at the \$15.1 million dollar level, which shortage has so far been made up solely by the Department's Land Division. Continued attempts to lower the lease rent revenues received by the Land Division (which manages the bulk of the Department's leases) will result in the Division no longer being able to make up the annual shortfall owed by the State.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**JESSE K. SOUKI**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS



## Hawaii Cattlemen's Council, Inc.

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### SENATE COMMITTEE ON WATER & LAND SENATE COMMITTEE ON JUDICIARY & LABOR

Thursday March 20, 2014 1:20 p.m. Room 225

#### **HB 1823 HD1 RELATING TO PUBLIC LANDS**

Requires mediation in disputes regarding the fair market value or fair market rental of public lands. Provides for binding arbitration in the event of unsuccessful mediation. Effective July 1, 2020. (HB1823 HD1).

Chair Solomon, Chair Hee, Vice Chairs and Members of the Committees:

My name is Alan Gottlieb, and I am a rancher and the Government Affairs Chairperson of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly supports** HB 1823 HD1

Ultimately, it would be desirable for all leases for agricultural or aquacultural operations be moved from DLNR to HDOA. The legislature agrees with this and passed what became Act 90, SLH 2003. However, there have been a number of reasons that some lands have not been transferred, such as lands that are on property zoned other than agriculture or have mixed zoning. HDOA rules are set up to encourage agriculture, and make it practical to do so. DLNR's rules, we are told, are to get the "Highest and Best use" for the lands, which we are told often means the most money possible for the State.

Until then, this bill is extremely important to help keep farmers and ranchers producing food and other agricultural products on State leased lands. Farmers and their families who have worked hard, farmed or ranched successfully and paid their rent faithfully for many years should not lose their farms and their livelihoods simply because their leases expire and are reopened and rents escalate to rates unaffordable by most agricultural ventures.

We have found that in some lease "negotiations" with DLNR, "fair market value" is ***not fair*** when applied to agricultural land. This process is not compatible with the State's goal of promoting and encouraging local food production.

The use of **mediation is a more reasonable, much less expensive, and appropriate approach** to resolving a rental dispute. We also agree with a policy of transparency regarding the sharing of appraisal reports prior to mediation.

We appreciate this opportunity to provide testimony on this matter.

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**HB1823**

Submitted on: 3/19/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Harry von Holt	Ponoholo Ranch, Ltd	Support	No

Comments:

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**HB1823**

Submitted on: 3/19/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
brian nakano	Chika Nakano Repair Shop	Support	No

Comments: Please support this bill.It's very important for my business

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**HB1823**

Submitted on: 3/19/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carol A. VanCamp	Japanese Chamber of Commerce & Industry	Support	No

Comments: Our nearly 300-member organization supports this bill because it will improve the state leasing process and make it fair to both lessors and lessees.

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# McCully Works

40 Kamehameha Ave.

Hilo, Hi. 96720

Testimony in SUPPORT of HB1823

Senate Joint Committee Hearing

Water&Land

Chair Malama Solomon, Vice Chair Brickwood Galuteria

Judiciary&Labor

Chair Clayton Hee , Vice Chair Maile Shimabukuro

Aloha Chairs Solomon and Hee,

My name is James McCully, I am a farmer here in Hilo ( Mauna Kea Orchids ) and over the years I have invested in state leasehold property for my retirement. I currently operate a business leasing demised warehouse spaces to other small businesses on 3 parcels of state land in the Kanoelehua Industrial Area in Hilo. That business is “McCully Works”.

Prior to my testimony I would like to point out the support this bill has gained at other hearings. First and foremost, this same joint committee heard the Senate companion bill, SB2966 and unanimously passed it out with the accompanying SSCR2393. In that report you wrote;

*“Your Committees find that mediation is an effective method of resolving disputes that should be made available to resolve disputes regarding the fair market value or fair market rental of public lands in transactions involving the Board of Land and Natural Resources and private purchasers, owners, or leaseholders. The present statutory framework for the arbitration of such disputes is cumbersome and does not provide the parties an opportunity to work collaboratively toward mutual solutions to disputes.”*

Here then is my testimony:

HB1823 has three features that seem fair to all the parties.

First, the release of the initial appraisal commissioned by DLNR to arrive at a proposed lease rent provides the lessee with the opportunity to review the report before making a decision to accept or reject the rent. This is fair and it allows the lessee to make an informed decision, which is always preferable. While the current statutory language requires that the appraisals be a matter of public record this has recently been interpreted to mean that the appraisal report would not be released until the matter of rent resets were completed. There is an Office of Information Practice ruling on this matter, OIP 91-10 that fully supports the position that the appraisals should be released during the negotiation process.

Second, while arbitration was originally envisioned as being an effective, low cost means of dispute resolution it has evolved into a much more expensive and time consuming creature. Mediation, when entered into in good faith, seems to be a reasonable and proper beginning to a disagreement and may lead to a reasonable resolution at a very low cost. Trained mediators are readily available and the time required to go through the process can be controlled through administrative rules.

Third, the transition from a three member panel to a single arbitrator provides an immediate cost savings if only by reduction in numbers. As it stands each of the “three disinterested appraisers” are required to complete their own study, then review the work of the other appraisers, and then sit in judgment and decide the final value determination. This has led to the party appointed appraisers becoming advocates for their client’s position, with a wide disparity in proposed values frequently being the starting point. This is the opposite of “disinterested”. It would be appropriate to have the appraisers do what they are specifically trained to do, that is, arrive at a fair market rent or valuation as required by the lease contract.

If differences arise then hopefully they can be resolved through mediation. If not, by allowing experts to serve as arbitrators who are experienced in law, contract, real estate and resolving disputes we would better separate the decision from the advocacy. Other advantages include that this would dramatically increase the size of the arbitrator pool. It would likely reduce the costs of the arbitrator to something closer to what a Judge would allow as arbitration fees in a court ordered arbitration. Currently the appraisers are charging much higher rates to provide this same function.

If you have any questions please feel free to contact me at your convenience

Mahalo,

«GreetingLine»

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40 Kamehameha Ave.  
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808-933-7000



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**HB1823**

Submitted on: 3/19/2014

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
rodney kim	siba	Support	No

Comments: the sand island business association strongly supports this bill. mahalo

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**HB1823**

Submitted on: 3/19/2014

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard Henderson	Individual	Support	No

Comments:

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**HB1823**

Submitted on: 3/19/2014

Testimony for WTL/JDL on Mar 20, 2014 13:20PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bud & Katy Gibson	Individual	Support	No

Comments: We need to make it easier to ranch and farm in Hawaii. We need to be able to feed our population ourselves and not rely on shipping in food from the mainland. In the wake of a natural disaster we need to be self sufficient. Anything that helps agriculture helps all of Hawaii.

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